

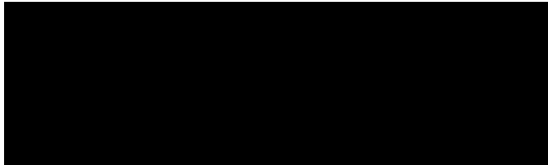


U.S. Department of Justice

Immigration and Naturalization Service

A2

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D. C. 20536



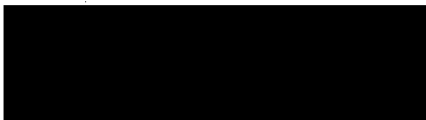
FILE: [REDACTED] Office: Miami

Date: OCT 3 2000

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT:



Public Copy

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director determined that the applicant was not eligible for adjustment of status because he was not inspected and admitted or paroled into the United States. The district director, therefore, denied the application.

The applicant has provided no statement or additional evidence on notice of certification.

The application for adjustment of status filed on January 17, 1997, shows that the applicant entered the United States at El Paso, Texas, on March 24, 1986. While the applicant failed to indicate in this application that he was inspected by an officer of the Service upon arrival, he claimed that he was paroled into the United States. The applicant, however, failed to submit evidence to support his claim that he was in fact inspected and paroled although he was requested on October 25, 1996, and again on June 2, 1998, to submit his Form I-94 (Arrival\Departure Card) as evidence that he was in fact inspected by a Service officer.

The applicant bears the burden of proving that he in fact presented himself for inspection as an element of establishing eligibility for adjustment of status. Matter of Arequillin, 17 I&N Dec. 308 (BIA 1980). The applicant has failed to meet that burden.

It is, therefore, concluded that the applicant has failed to establish that he was inspected and admitted or paroled into the United States. There is no waiver available to an alien found statutorily ineligible for adjustment of status on the basis that he was not inspected and admitted or paroled into the United States. The applicant is ineligible for the benefit sought. The decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.